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Brief. Ct

IN THE

Supreme Court of the United States

OCTOBER TERM, 1947.

No. 506

A. B. T. MANUFACTURING CORPORATION,
Petitioner,

vs.

NATIONAL SLUG REJECTORS, INC.,
Respondent.

PETITION FOR WRIT OF CERTIORARI

To the United States Circuit Court of Appeals for the Seventh Circuit and

BRIEF IN SUPPORT.

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NATIONAL SLUG REJECTORS, INC.,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

To the Honorable the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Your petitioner, A.B.T. Manufacturing Corporation, respectfully prays for a writ to the Circuit Court of Appeals for the Seventh Circuit to review the judgment entered by that court October 17, 1947.

The transcript of the record in the case, including the proceedings in said Circuit Court of Appeals, is furnished forthwith in accordance with Rule 38 of the Rules of this court.

Note: Unless otherwise noted, emphasis by brief writer.

SUMMARY AND SHORT STATEMENT.

Respondent, National Slug Rejectors, Inc., filed suit against petitioner, A.B.T. Manufacturing Corporation, for infringement of claim 21 (R. 336) of the Fry patent No. 2,292,628 (R. 322) issued August 11, 1942, for a coin selector.

On June 27, 1946, the District Court filed its opinion (R. 297) holding claim 21 infringed but invalid as lacking invention over the prior art patents (R. 356, 370, 424, 498).

The respondent appealed and the Circuit Court of Appeals by its decision (R. 522) dated October 17, 1947, reversed the District Court holding the claim valid and directing the entry of a judgment for an injunction and an accounting.

The patent by its specification (R. 333, l. 43) and drawings (Fig. 18, R. 330) discloses and claim 21 thereof defines a coin selector in which there is a weight-balanced cradle swingably secured to a scavenger gate and having spaced projections extending into a coin receiving pathway. A coin of proper diameter and weight, deposited in the coin receiving pathway, will cradle upon the projections to pivot the cradle so as to direct the coin into a coin acceptance pathway. Coins of proper diameter but of insufficient weight will not pivot the cradle but will be blocked by it until subsequently dislodged therefrom by movement of the scavenger gate. Coins of subnormal diameter will freely by-pass between the projections of the cradle and into the coin rejection pathway.

The single claim in suit appears in the footnote*.

*Claim 21. The combination in a coin selecting apparatus of the character described for separating undersized coins from

The device of the single claim is used entirely by the vending machine industry. The record shows (R. 81) that that industry represents an investment of more than 250 million dollars and does an annual business of from two to three times that amount.

Other than petitioner and respondent there are no manufacturers of slug rejectors of the type herein involved or slug rejectors for sale to the vending machine industry (see Patzer affidavit in the Appendix). By reason of which, there is no likelihood of obtaining a decision in another Circuit with respect to the validity and scope of the single claim in issue.

This claim was held invalid by the trial court but reversed by the Circuit Court of Appeals which held the claim valid upon the theory that the patent statute, Section 4886, 35 U. S. C. 31, *exacted nothing more than novelty and utility* to make a device patentable. There the Circuit Court of Appeals said (R. 524) with respect to this patent statute that:

> "The statute defines in clear language, inventions which are

---

coins having predetermined acceptable diameters of a frame having a coin receiving pathway, a connecting coin rejection pathway, a connecting coin acceptance pathway, a pivotally mounted member having a pair of integral spaced projections normally extending into said coin receiving pathway, means adapted to yieldably urge said projections into a normal position, said member swingably secured to a movable retainer, said retainer yieldably positioned to the said frame adjacent to said receiving pathway and adapted to be laterally displaced from said frame to withdraw said projections from said receiving pathway, said pair of projections spaced in relation to encounter the edge of a coin of acceptable diameter propelled by gravity in said receiving pathway to swing said member to divert said coin into said acceptance pathway, said projections arranged to by-pass therebetween a coin propelled by gravity in said receiving pathway having a diameter less than a coin of acceptable diameter, to separate undersized coins from coins having acceptable diameters and to scavenge said pathways.

> "'Any person who has invented or discovered *any new and useful art,** machine, manufacture or composition of matter, or any new and useful improvements thereof * * * not known or used by others in this country, before his invention or discovery thereof * * * may * * * obtain a patent therefor.' (35 U. S. C. A. Sec. 31.)
>
> "There must be *novelty;* there must be *utility. The statute exacts nothing more.*"

The Circuit Court of Appeals, after observing that patents are not void because they are small or narrow, in the concluding paragraph (R. 532) of its decision, further said with respect to this statute, that:

> "At least Congress evidently so believes, for it retains a patent system that rewards those who contribute to the public welfare by *new and useful products.*"

By its decision (R. 527 *et seq.*) the Circuit Court of Appeals held that under the patent statute, it is the *novelty* of a device which is patentable.

The Circuit Court of Appeals cited and relied upon as supporting authority for its interpretation of the patent statute, its previous decision (written by the same judge who wrote the decision in the case at bar) in *Chicago Steel Foundry Co.* v. *Burnside Steel Foundry Co.,* 132 F. 2d 812 (1943).

In that case the Circuit Court of Appeals for the Seventh Circuit in refusing to follow the rule of law with respect to the patent statute as announced by this court in *Cuno Engineering Corporation* v. *Automatic Devices Corporation,* 314 U. S. 84, 62 S. Ct. 37, 86 L. Ed. 58, 51 U. S. P. Q. 272, and in rejecting for the *first time* (p. 817) the doctrine of the "*flash of genius*" test for invention as announced by this court in the Cuno case, *supra,* said (p. 818):

> "Approaching the specific question in this case—the patentable novelty of the apparatus described in the two claims of plaintiff's patent here involved, *we*

*Emphasis by Circuit Court of Appeals.

> *are rejecting the flash of genius test.* We are adhering to the view which we believe all scientific knowledge and advance in knowledge is built on—the step by step advance—the test and error method. Also we are following the view that invention lies in, and must be determined by, the product, not in the mental activities or contortions that brought it forth."

In referring to the test of invention as the "measuring standards," the Circuit Court of Appeals in its decision in the case at bar, said:

> "The *tests,* the measuring standards, are not a fixed and universally applied measure. At best, the standard is relative in nature and is created by each judge as he seeks to measure the advance of the alleged inventor. Uncertainty is almost sure to accompany relativity in testing methods. One court *will reject* what another accepts as patentable novelty, solely because of the difference in measuring standards."

and thereby affirmed its previous rejection of the requirements of the patent statute and the test of invention as announced by this court in the Cuno case.

Upon the foregoing theories and conclusions the Circuit Court of Appeals in its decision in the case at bar, particularly by its holding that the patent statute *exacted nothing more than novelty and utility* to constitute a device patentable thereunder, reversed the trial court's finding and conclusion of invalidity of claim 21 for lack of invention over the prior art.

JURISDICTION.

1. The decision of the Circuit Court of Appeals was entered on October 17, 1947 (R. 522).

2. A petition for rehearing was denied by the Circuit Court of Appeals on December 8, 1947 (R. 535).

3. The jurisdiction of this court is invoked under Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925 (28 U. S. C. Sec. 347) and Sec. 5(b) of Rule 38 of this Court.

4. Cases believed to sustain the jurisdiction are:

Altoona Theatres v. *Tri-Ergon Corp.*, 294 U. S. 464.

Schriber-Schroth Co. v. *Cleveland Trust Co.*, 305 U. S. 47.

United Carbon Company, et al. v. *Binney & Smith Co.*, 317 U. S. 228.

Goodyear Tire & Rubber Co., Inc. v. *Ray-O-Vac Co.*, 321 U. S. 275.

Halliburton Oil Well Cementing Co. v. *Walker*, 329 U. S. 1, 71 U. S. P. Q. 175.

Muncie Gear Works v. *Outboard Marine Mfg. Co.*, 315 U. S. 759, 62 S. Ct. 865.

Exhibit Supply Co. v. *Ace Patents Corp.*, 315 U. S. 126.

QUESTIONS PRESENTED.

The decision of the Circuit Court of Appeals for the Seventh Circuit presents the following questions:

1. Did the Circuit Court of Appeals correctly interpret Sec. 4886 of the Revised Patent Statutes, 35 U. S. C. 31, in holding that, for a device to be patentable, the statute *"exacts nothing more" than "novelty and utility"*?

2. To what extent and under what conditions, if any, may a Circuit Court of Appeals depart from and renounce a rule of law promulgated by this court, where such rule would be decisive of the case before the Circuit Court of Appeals?

3. Did the Circuit Court of Appeals for the Seventh Circuit depart from and modify the decision of this court in *Cuno Engineering Corporation* v. *Automatic Devices Corporation*, 314 U. S. 84, 62 S. Ct. 37, 86 L. Ed. 58, 51 U. S. P. Q. 272, in holding that the patent statute, R. S. 4886, 35 U. S. C. 31, exacts nothing more than novelty and utility to constitute a device patentable under that statute?

4. Is invention to be determined by the product, or by the mental activities that brought forth the product, or by a combination of both of these factors?

REASONS RELIED UPON FOR ALLOWANCE OF THIS PETITION.

It is believed that the writ should be granted in this case for the following reasons:

1. In holding that the patent statute, R. S. 4886, 35 U. S. C. 31, exacts nothing more than novelty and utility to constitute a device patentable under that statute, the Circuit Court of Appeals for the Seventh Circuit has decided a Federal question in direct conflict with the applicable rule of this court in *Cuno Engineering Corporation* v. *Automatic Devices Corporation*, 314 U. S. 84, 62 S. Ct. 37, 86 L. Ed. 58, 51 U. S. P. Q. 272, as well as other Circuit Courts of Appeals.*

2. In holding that the patent statute, R. S. 4886, 35 U. S. C. 31, exacts nothing more than novelty and utility to constitute a device patentable under that statute, the Circuit Court of Appeals has rendered a decision in conflict with the fundamental principles of patent law enunciated by this court in the Cuno case, *supra*, and has extended at the expense of the public the right to a patent monopoly beyond that authorized by said statute.

3. If the decision of the Circuit Court of Appeals for the Seventh Circuit in the case at bar is allowed to stand, and novelty and utility alone are to form the basis of a

Anderson Co. et al. v. *Lion Products Co., Inc. et al.*, 127 F. 2d 454 (C .C. A. 1); *Weidhaas* v. *Loew's, Inc. et al.*, 125 F. 2d 545 (C. C. A. 2); *Pearson Sanding Mach. Co.* v. *Williams Furniture Co.*, 132 F. 2d 55 (C. C. A. 4); *Trabon Engineering Corporation* v. *Dirkes et al.*, 136 F. 2d 24 (C. C. A. 6); *Freeman et al.* v. *Altvater et al.*, 138 F. 2d 854 (C. C. A. 8); *Standard Cap & Seal Corporation* v. *Coe*, 124 F. 2d 278 (App. D. C.); *In re Shortell*, 142 F. 2d 292 (C. C. P. A.).

patent monopoly, and invention is to be no longer required, a new phase of patent jurisprudence will be established and the public interest and welfare jeopardized by patent monopoly in the Seventh Judicial Circuit.

4. The Circuit Court of Appeals in the decision in the case at bar and by its reliance upon its decision in the case of *Chicago Steel Foundry Co.* v. *Burnside Steel Foundry Co.*, 132 F. 2d 812, has for the *second* time (the same judge writing the opinion in each case) refused to apply, and has proceeded contrary to, the rule of law announced by this court in *Cuno Engineering Corporation* v. *Automatic Devices Corporation*, 314 U. S. 84, 62 S. Ct. 37, 86 L. Ed. 58, 51 U. S. P. Q. 272, with respect to the test of invention and the requirements of the patent statute.

5. A review by this court is warranted because of the sharp conflict between the conclusions *twice* reached by the Circuit Court of Appeals for the Seventh Circuit and those of this court and other Circuit Courts of Appeals on decisive subject matter which is not only vital and material to a decision on the validity of the claim in issue but which is also of such great public importance especially to the vending machine industry, users of devices of the character here involved and which industry represents an investment of more than 250 million dollars throughout the United States and does an annual business of from two to three times that amount. *Forsyth* v. *Hammond*, 166 U. S. 506; *Klaxon Company* v. *Stentor Electric Mfg. Company, Inc.*, 313 U. S. 487, 49 U. S. P. Q. 515; *Duplate Corporation and Pittsburgh Plate Glass Company* v. *Triplex Safety Glass Company of North America*, 298 U. S. 448, 29 U. S. P. Q. 306.

6. In view of the fact that there is no likelihood of obtaining a decision in another Circuit with respect to the validity and scope of the claim of the patent in suit, and

because of the importance of the questions presented, this court should exercise its power of review. *Schriber-Schroth Co.* v. *Cleveland Trust Co.*, 305 U. S. 47; *Muncie Gear Works* v. *Outboard Marine Mfg. Co.*, 315 U. S. 759; *Exhibit Supply Co.* v. *Ace Patents Corp.*, 315 U. S. 126.

Wherefore, it is respectfully submitted that this petition for writ of certiorari to the Circuit Court of Appeals of the Seventh Circuit should be granted.

Respectfully submitted,

A. B. T. MANUFACTURING CORPORATION,
Petitioner,

By .....

CLARENCE E. THREEDY,
111 West Washington Street,
Chicago, Illinois,
Its Attorney.

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A. B. T. MANUFACTURING CORPORATION,
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NATIONAL SLUG REJECTORS, INC.,
Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

To the Honorable the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The decision of the Circuit Court of Appeals now sought to be reviewed, was entered on October 17, 1947 (R. 522).

Jurisdiction of this court is invoked under Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925 (28 U. S. C. Sec. 347) and Sec. 5(b) of Rule 38 of this court.

STATEMENT OF THE CASE.

To avoid repetition, reference is hereby made to the statement on pages 2-5, *supra,* of the Petition for Writ of Certiorari.

SPECIFICATION.

The following are the alleged errors of the Circuit Court of Appeals which will be urged before this court:

1. The Circuit Court of Appeals erred in holding that the patent statute, R. S. 4886, 35 U. S. C. 31, exacted nothing more than "novelty" and "utility" to constitute a device patentable under that statute.

2. The Circuit Court of Appeals erred in holding claim 21 of the Fry patent, 2,292,628, valid over the prior art relied upon by the petitioner upon the theory that the patent statute, R. S. 4886, 35 U. S. C. 31, exacted nothing more than "novelty" and "utility" to constitute a device patentable under that statute.

3. The Circuit Court of Appeals erred in holding claim 21 of the Fry patent 2,292,628, valid over the prior art upon the erroneous assumption that under the patent statute it is the "novelty" of a device which determines its patentability.

4. The Circuit Court of Appeals erred in holding claim 21 of the Fry patent, 2,292,628, valid over the prior art relied upon by petitioner.

ARGUMENT.

Point I.

This case presents for review a decision (R. 522) of the Circuit Court of Appeals for the Seventh Circuit in which that court has decided a Federal question in direct conflict with the applicable rule of this court in *Cuno Engineering Corporation* v. *Automatic Devices Corporation,* 314 U. S. 84, 62 S. Ct. 37, 86 L. Ed. 58, 51 U. S. P. Q. 272, as well as other Circuit Courts of Appeals.

As the statutory requirements (R. S. 4886) with respect to the grant of a private monopoly on the public domain are an important factor in patent law, this case presents exceptional circumstances affecting patent monopoly within the Seventh Judicial Circuit and the public interest and welfare. It particularly affects the vending machine industry, only users of devices of the character here involved. That industry represents an investment of more than $250,000,000 throughout the United States and does an annual business of from two to three times that amount (R. 81).

Specifically, the question has to do with the patent statute, Section 4886, 35 U. S. C. 31. By its decision, the Circuit Court of Appeals has extended, at the expense of the public, the right to a patent monopoly beyond that authorized by Section 4886 of the Revised Patent Statutes, 35 U. S. C. 31, which decision is in conflict with the fundamental principles of patent law enunciated by this court in the Cuno case.

With respect to this patent statute, the Circuit Court of Appeals in its opinion in the case at bar (R. 524) said:

"The statute defines in clear language, inventions which are

> " 'Any person who has invented or discovered *any new and useful art,** machine, manufacture, or composition of matter, or any new and useful improvements thereof * * * not known or used by others in this country, before his invention or discovery thereof * * * may * * * obtain a patent therefor.' (35 U. S. C. A. Sec. 31.)

"There must be *novelty;* there must be *utility. The statute exacts nothing more.*"

In the concluding paragraph of its opinion, the Circuit Court of Appeals further said (R. 532) with respect to the patent statute:

> "At least Congress evidently so believes, for it retains a patent system that rewards those who contribute to the public welfare by *new and useful* products."

The Circuit Court of Appeals by holding (R. 524)

> "There must be novelty; there must be utility. The statute exacts nothing more."

has construed this statute as requiring only novelty and utility to constitute a device patentable. The Circuit Court of Appeals has by such holding eliminated from the statute, the requirement of invention.

By its decision the Circuit Court of Appeals has established within the Seventh Judicial Circuit, a doctrine that if a device exhibits "novelty" and "utility", it meets the requirement of the patent statute and the novelty exhibited by such device is therefore patentable. It has completely ignored the rule that the art, machine, manufacture or composition of matter said to exhibit novelty and utility must under the patent statute also be an "invention" or "discovery". *Each requirement of the patent statute is*

*Emphasis by Circuit Court of Appeals.

a complement to the other. They are not patentably severable.

By ruling that the patent statute exacts nothing more than *novelty* and *utility* to make a device patentable thereunder and by eliminating therefor the requirement of invention, the Seventh Circuit Court of Appeals has established a new phase of patent jurisprudence. It has decided a Federal question in direct conflict with the applicable decision of this court in numerous cases, particularly in the Cuno case, supra.

In that case, this court said (314 U. S. 84 @ 90):

> "We may concede that the functions performed by Mead's combination are *new* and *useful*. But that does not necessarily make the device patentable. Under the statute (35 U.S.C. 31, R.S. 4886) the device must not only be new and useful, it must also be '*invention*' or '*discovery*'." * * *
>
> "That is to say the new device, however useful it may be, must reveal the flash of creative genius, not merely the skill of the calling. If it fails, it has not established its right to a private grant on the public domain."

This conflicting decision of the Circuit Court of Appeals creates a situation wherein the public interest and welfare is assaulted and endangered by patent monopoly in the Seventh Judicial Circuit. The Circuit Court of Appeals in effect has done that which Congress only has the power to do, to-wit: amended by judicial determination the patent statute by eliminating therefrom the requirement of invention as one of the requisites to the issuance of a valid patent.

This sharp conflict between the conclusions reached by the Circuit Court of Appeals for the Seventh Circuit and those of this court and the other Circuit Courts of Appeals, coupled with the great public interest in the question pre-

sented, warrants a review by this court. *Klaxon Company* v. *Stentor Electric Mfg. Company, Inc.*, 313 U. S. 487, 49 U.S.P.Q. 515. *Duplate Corporation and Pittsburgh Plate Glass Company* v. *Triplex Safety Glass Company of North America*, 298 U. S. 448, 56 S. Ct. 792, 80 L. Ed. 1274, 29 U.S.P.Q. 306. *Halliburton Oil Well Cementing Co.* v. *Walker*, 329 U.S. 1, 71 U.S.P.Q. 175.*

Point II.

The test of invention as announced by this court in the Cuno case, *supra*, has been applied by the Circuit Courts of Appeals of other Circuits** and by the Circuit Court of Appeals for the Seventh Circuit*** until *twice* renounced by the latter court in its decisions in the case at bar and in *Chicago Steel Foundry Co.* v. *Burnside Steel Foundry Co.*, 132 F. 2d 812, cited as authority for the conclusions reached in its decision in the case at bar.

The test of invention laid down by this court in the Cuno case was *first rejected* by the Circuit Court of Appeals for the Seventh Circuit in the Chicago Steel Foundry case, *supra*, as appears from the following language (p. 818):

---

*In *Halliburton Oil Well Cementing Co.* v. *Walker*, 329 U. S. 1, notwithstanding the absence of conflicting decisions between different Circuit Courts of Appeals with respect to the patent there in suit, this court granted a writ of certiorari to consider whether the statutory requirement (Sec. 4888) of distinctness and certainty in claims was correctly applied by the lower court.

**_Anderson Co. et al._ v. _Lion Products Co., Inc. et al._, 127 F. 2d 454 (C. C. A. 1); _Weidhaas_ v. _Loew's, Inc., et al._, 125 F. 2d 545 (C. C. A. 2); _Pearson Sanding Mach. Co._ v. _Williams Furniture Co._, 132 F. 2d 55 (C. C. A. 4); _Trabon Engineering Corporation_ v. _Dirkes et al._, 136 F. 2d 24 (C. C. A. 6); _Freeman et al._ v. _Altvater et al._, 138 F. 2d 854 (C. C. A. 8); _Standard Cap & Seal Corporation_ v. _Coe_, 124 F. 2d 278 (App. D. C.); _In re Shortell_, 142 F. 2d 292 (C. C. P. A.).

***_Ronning Machinery Co. et al_ v. _Caterpillar Tractor Co._, 129 F. 2d 70 (C. C. A. 7).

> "Approaching the specific question in this case—the patentable novelty of the apparatus described in the two claims of plaintiff's patent here involved, we are *rejecting* the flash of genius test. We are adhering to the view which we believe all scientific knowledge and advance in knowledge is built on—the step by step advance—the test and error method. Also we are following the view that invention lies in, and must be determined by, the product, not in the mental activities or contortions that brought it forth."

In referring to the test of invention as "measuring standards," the Circuit Court of Appeals in its decision in the case at bar said:

> "The tests, the measuring standards, are not a fixed and universally applied measure. At best, the standard is relative in nature and is created by each judge as he seeks to measure the advance of the alleged inventor. Uncertainty is almost sure to accompany relativity in testing methods. One court *will reject* what another accepts as patentable novelty, solely because of the difference in measuring standards."

and thereby affirmed its previous rejection of the test of invention as announced by this court in the Cuno case.

This sharp conflict between the Circuit Court of Appeals for the Seventh Circuit and those of this court and other Circuit Courts of Appeals with respect to the test of invention, and the rejection by the Circuit Court of Appeals for the Seventh Circuit of the test as announced by this court in the Cuno case, further warrants a review by this court. *Forsyth* v. *Hammond*, 166 U. S. 506, *Exhibit Supply Co.* v. *Ace Patents Corporation*, 315 U. S. 126, *Halliburton Oil Well Cementing Co.* v. *Walker*, 329 U. S. 1, 71 U. S. P. Q. 175.

Point III.

This case presents the further and important question: Is invention to be determined by the product; or by the mental activities that brought forth the product; or by a combination of both of these factors; are novelty and utility alone sufficient to constitute a device patentable?

The Circuit Court of Appeals in its decision in the case at bar, as it did in the Chicago Steel Foundry case, *supra*, the same judge writing both decisions, decided the foregoing question in direct conflict with the applicable decision in the Cuno case.

In each case, the Circuit Court of Appeals *rejected* the test of invention as announced in the Cuno case and followed the view that a showing of novelty and utility alone is sufficient to make a device patentable.

Had the Circuit Court of Appeals applied the test of invention as announced by this court in the Cuno case, it would have found, as did the trial court, claim 21 invalid for want of invention.*

This question is of tremendous public importance and further warrants a review by this court.

Point IV.

The patent in suit dominates an industry. As shown by the affidavit (in the Appendix) of William Patzer, vice-president of the defendant corporation, petitioner herein, there are no manufacturers, other than petitioner and respondent, who are engaged in the manufacture of a coin selector such as is involved in this litigation or a coin selector for sale to the vending machine industry. Therefore, litigation in other Circuits resulting in a conflict of decisions with respect to the validity of the patent in suit

*See Appendix.

would not be likely to occur. In similar situations this court, in *Muncie Gear Works* v. *Outboard Marine & Mfg. Co.*, 315 U. S. 759, 62 S. Ct. 865, and *Exhibit Supply Co.* v. *Ace Patents Corporation*, 315 U. S. 126, granted writs of certiorari.

In the Exhibit Supply case, *supra*, this court said:

> "Although there is no conflict of decision, we are moved to grant the petition by the nature of the questions presented together with a showing that the industry affected by the patent is located in the Seventh Circuit so that litigation in other Circuits resulting in a conflict of decisions would not be likely to occur."

The power of this court to grant a writ of certiorari is co-extensive with all possible necessities. *Forsyth* v. *Hammond*, 166 U. S. 506.

PRAYER.

Wherefore, your petitioner prays that its petition be granted; that a writ of certiorari be issued and the case reviewed and the judgment of the Circuit Court of Appeals reversed and that of the trial court affirmed.

Respectfully submitted,

A.B.T. MANUFACTURING CORPORATION,
Defendant-Appellee,

By Clarence E. Threedy

CLARENCE E. THREEDY,
Its Attorney.

APPENDIX.

Affidavit in Support of Petition for Writ of Certiorari.

STATE OF ILLINOIS, }
County of Cook. } ss.

I, WILLIAM PATZER, being duly sworn, depose and say that I am of legal age, a resident and citizen of the City of Chicago, County and State aforesaid, and vice-president of petitioner company, A.B.T. Manufacturing Corporation;

That I am now and have been for a period of more than twenty years engaged and associated with the manufacture of coin selectors for use by the vending machine industry;

That said vending machine industry represents an investment of more than 250 million dollars and is the only user of the coin selector here involved;

That 99% of the manufacturers in the vending machine industry are purchasers of said coin selectors;

That no manufacturer, other than petitioner company and respondent company, National Slug Rejectors, Inc., is engaged in the manufacture of a coin selector of the type involved in this litigation or a coin selector for sale to the vending machine industry.

Further affiant sayeth not.

William Patzer

WILLIAM PATZER.

Subscribed to and sworn before me this 30th day of December, 1947.

Katherine A. Yergy

KATHERINE A. YERGY,
Notary Public.

The Prior Art.

The DuGrenier patent, No. 2,033,930 (R. 426) shows and describes a coin testing mechanism which embodies the broad combination set forth in claim 21 in issue including a coin testing lever swingably secured to a retainer member.

The Cahoon patent, No. 454,425, Figs. 4 and 5 (R. 358) and the Trippensee patent, No. 953,363, Fig. 3 (R. 371), each disclose the specific coin testing cradle referred to in claim 21 in issue as a pivotally mounted member.

The Fry *et al.* patent, No. 2,326,211 (R. 498) discloses a device which the trial court found and concluded (R. 306, par. 25; R. 308, par. 7) to be the full mechanical equivalent of the device of claim 21 in issue. This patent particularly shows a device capable of performing the function of rejecting a coin of proper diameter but underweight.